

Ms. Donna Wieting, Chief
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Office of Protected Resources, NMFS (F/PR2),
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Silver Spring, MD 20910

submitted by email to 0648-AR15@noaa.gov,

1 June 2004

Dear Donna,

On behalf of the more than 8 million members and constituents of The Humane Society of the United States (The HSUS), I would like to offer the following comments on the NOAA Fisheries proposed definition of the Zero Mortality Rate Goal (ZMRG) of the Marine Mammal Protection Act (69 FR 23477). We wholeheartedly support the intention of NOAA Fisheries to use ten percent (10%) of the Potential Biological Removal (PBR) level as the standard by which to measure whether or not fisheries have met the ZMRG of the MMPA.

In the HSUS' comments of 8 September 2003, we supported use of this definition and are pleased to see that NOAA Fisheries has chosen to go forward with it. Since passage of the MMPA, the ZMRG has symbolized the desire of the American people to see that fisheries operate with due care for the lives and welfare for marine mammals with whom their fishing gear may interact. We do not believe that it was intended to be absolute zero; rather, it should represent a level of mortality that is sufficiently low to assure that there is no significant biological impact from fisheries and, more importantly, a level that encourages the development and use of risk averse fishing gear and practices.

Since 1995, in all of its annual stock assessments, the NMFS has used 10 percent of PBR as the measure by which it determines attainment of ZMRG and, thus, the impacts of fisheries on particular stocks of marine mammals. For example, in the 2002 stock assessment for the Western North Atlantic stock of long-finned pilot whales (*Globicephala melas*), NMFS states "[t]he total fishery-related mortality and serious injury for this stock is not less than 10% of the calculated PBR and, therefore, cannot be considered insignificant and approaching zero mortality and serious rate." We believe that NOAA Fisheries should continue the use of this long-standing measure of ZMRG.

In September of 2003, when NOAA fisheries published its notice of intent to define ZMRG (68 FR 40888), it offered three possible definitions. Of the three options, the use of 10 per cent of PBR was the most conservative for endangered stocks and stocks whose status was unknown. This seems appropriate, and we applaud NOAA Fisheries for taking the more precautionary approach.

Because Take Reduction Teams are not mandatory for fisheries for which the overall mortality and serious injury rate is below PBR, yet above the ZMRG, it may be difficult

for fishermen to be aware of the means for further reducing their lethal interactions. We believe that the NMFS needs to provide formal outreach to fisheries, perhaps through gear-specific workshops, as a means of informing them of risk averse technologies and to solicit innovative ideas for additional research and development. The take reduction process has shown that it is not enough to simply require that reductions in serious injury and mortality be made, but concerted effort must be made to involve fishermen in finding and adopting practices and technologies that can achieve the goals.

We wish to reiterate a concern with the proposed definition. Under the proposed definition, interactions (and thus mortalities) can continue to increase as marine mammal populations grow, because the number that would constitute achievement of ZMRG would increase as the population estimate increases. This would seem counter to the intent specified in the MMPA that rates be “reduced to insignificant levels *approaching* zero mortality and serious injury.” (16USC 1371 Sec. 101(a)(2) *emphasis added*). We believe that this language in the Act indicates that this is not intended to be a static concept, but is intended to ensure that mortality is always reduced to its lowest feasible level. In lieu of “ratcheting” the ZMRG to lower numbers as stocks increase, we believe that the NOAA Fisheries needs to develop a mechanism for capping mortality once the ZMRG has been reached, regardless of whether a stock continues to increase. This would prevent death rates from increasing ever higher as marine mammal stocks finally begin to recover.

The ZMRG is an important part of the MMPA. It provides incentive for developing risk averse fishing gear and methods that assure that any mortality or serious injury resulting from fisheries is truly accidental and not a consequence of wanton disregard of the lives of individual animals. We appreciate the opportunity to comment on this proposed definition that will codify NOAA’s long-standing interpretation of the ZMRG in the Act. Feel free to contact me if I can elaborate further on any of our comments.

Sincerely,

Sharon B. Young
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